

1979 WL 42884 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 26, 1979

*1 Honorable James B. Brandt
Representative
District No. 92
State House
Columbia, SC 29211

Dear Representative Brandt:

This letter is to confirm our conversation of March 22, 1979. You have inquired if the Legislature has the power to extend the term of school board members elected in 1978 for another year. This office is an office created by the Legislature and is not governed by constitutional provisions. In 67 C.J.S., Officers, § 70, it is stated that [t]he sovereign power creating an office may change its tenure in the absence of constitutional restriction . . . Accordingly, the legislature may change the term of an office during the term of an incumbent . . .

In [Ward v. Waters](#), 184 S.C. 353, 192 S.E. 410 (1937), the Supreme Court quoting with approval from [State v. Hough](#), 103 S.C. 87, 87 S.E. 437, held that the term of office in the county government in Florence County could be extended by the Legislature as [t]hose holding offices created by the legislature hold them subject to the legislative will. The power that creates an office can impose such limitations and conditions upon the manner of filling it, and the tenure and the exercise of the duties of the office, and may modify or abolish any of these . . . Ward, supra, at 360-361.

And in [Walpole v. Wall](#), 153 S.C. 106, 150 S.E. 760 (1929), a suit was brought contesting whether or not members of a board of trustees had been legislated out of office by newly enacted legislation. The court stated that [s]chool trustees and legislative, not constitutional, officers whose terms may be ended on extended at the will of the Legislature. Walpole, supra at 117. See also 1936 Att'y. Gen. Op. 137.

The Legislature can amend the term of any office created pursuant to the power of the Legislature. Therefore, the Legislature could extend the term of the existing school board members.

Very truly yours,

Treva G. Ashworth
Senior Assistant Attorney General

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